Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Qwest Communications International Inc.	)	
and U S WEST, Inc.	)	CC Docket No. 99-272
	)	
Applications for Transfer of Control of	)	
Domestic and International Sections 214	)	
and 310 Authorizations and Application to	)	
Transfer Control of a Submarine Cable	)	
Landing License	)	

REPLY COMMENTS OF TOUCH AMERICA

Touch America, Inc. ("Touch America"), through its attorneys, hereby respectfully submits its comments in reply to the May 5, 2000, comments filed by AT&T Corp. ("AT&T"), on the Divestiture Compliance Report filed by Qwest Communications Inc. ("Qwest"), in the referenced proceeding on April 14, 2000. 1/

As described in detail in the Divestiture Report, Touch America will be acquiring the entire in-region interLATA business of Qwest , effective upon closing of Qwest's merger with U S WEST, Inc. ("U S WEST"). For the reasons given below, Touch America urges the Commission to act promptly to approve Qwest's proposed divestiture as consistent with Section 271 of the 1996 Telecommunications Act, 47 U.S.C. § 271.

1/ Divestiture Compliance Report, filed by Qwest Communications Inc., April 14, 2000 ("Divestiture Report"); AT&T Comments on Divestiture Report (May 5, 2000) ("AT&T Comments"). *See* Public Notice, "Pleading Cycle Established for Comment on Qwest Communications International Inc. Report on Proposed Divestiture of its Long Distance Activity in the U S WEST Region," CC Docket No. 99-272, DA 00-874, released April 14, 2000.

INTRODUCTION AND SUMMARY

The sole party to file objections to the Divestiture Report is AT&T. As Touch America will show hereinafter, AT&T's objections to the Report are without merit. But equally important in Touch America's view is an understanding of the context in which AT&T is acting in this proceeding and how its existing relationship to Touch America and Qwest shade and define the real purpose of its participation here. AT&T is the largest interexchange carrier and one of the largest Internet backbone providers in the country. It is, therefore, the largest competitor to both Touch America and Qwest at the present time in relation to the customers and services which Touch America is acquiring from Qwest.

AT&T's objections to the Report are, therefore, predictable. It seizes upon the limitations of language and the necessities of these unique circumstances to paint a picture of non-compliance where under both specific circumstances and the totality of circumstances substantive compliance exists. Approaching the evaluation of AT&T's comments with this viewpoint firmly in mind, it is clear that AT&T's objections are not the result of uninterested analysis, but the work of a major competitor attempting to delay the consummation of a merger already found to be in the public interest. While AT&T pursues numerous mergers of its own in order to strengthen its position in the telecommunications marketplace, its role here is to enhance the advantage of its mergers by derailing or delaying the merger of Qwest and its divestiture to Touch America.

The Commission cannot overlook the self-serving nature of AT&T's objections. By challenging the validity of the divestiture structured by Touch America and Qwest, AT&T stands to reap the benefits of interfering with the growth of not one, but two, formidable competitors to its monopoly-inherited position in the telecommunications marketplace. Because of the merger transaction, AT&T will face a different type of competition from Qwest. Because of the divestiture, Touch America becomes the type of competitor that did not exist before and one which would not be able to achieve such status in as short a time frame as made possible by Touch America's acquisition of Qwest's business in the Western United States.

An equally important consideration which must help shape the Commission's evaluation of AT&T's objections is found on the other side of this transaction's coin. Not only will the marketplace experience increased competition from a stronger Touch America with increased resources and capacity, and a restructured Qwest, but Qwest itself will be challenged by the new competitive capabilities of Touch America when the regulatory process on these transactions is completed. And, Touch America will indeed face the competition of the restructured Qwest as will AT&T and others in the industry.

The acquisition of Qwest's in-region business and network assets is of prime strategic importance to Touch America's growth and expansion plans. The information supplied to the FCC demonstrates that AT&T's comments rely largely on factual misstatements and mischaracterizations of the record, which eliminate the validity of AT&T's arguments. Because of the critical importance of this acquisition to Touch America's future, and the relationship of Touch America's future to the future of greater competitive activity and benefits to the public, the Commission should act swiftly in approving the divestiture plan, a plan that clearly comports with FCC precedent and the terms of the Commission's March 10th merger order.2/

Touch America has been growing and expanding its telecommunications capabilities and resources for years. Long before this transaction presented itself, Touch America made a significant commitment to rapidly expand its telecommunications business. When the unique opportunity to

2/ Qwest Communications International, Inc. and U S WEST, Inc., *Applications for Transfer of Control*, CC Docket No. 99-272, FCC 00-91, released March 10, 2000.

buy Qwest's in-region business presented itself, Touch America acted swiftly and decisively and committed substantial resources to bringing this acquisition to closing in a speedy time frame. Without question, when the acquisition of Qwest's business presented itself, it became a key part of Touch America's expansion effort. The sooner Touch America can complete this acquisition, the sooner the public will reap its competitive benefits and the sooner Touch America will be able to move on to further steps in its growth strategy.

In addition to the self-serving and inconsequential nature of AT&T's objections, other compelling reasons demonstrate that swift approval best serves the public interest. Two examples leap to mind. To preserve the optimal value of the transaction to Touch America, it needs to avoid customer confusion. Industry experience demonstrates that customers, when confused by changes in ownership, decide to change their service provider. Knowing this, Touch America's competitors, like AT&T, would like nothing better than to generate negative or unsettling headlines about the transactions and create the opportunity to artificially manipulate the marketplace. Nothing would play into the hands of Touch America's competitors more than delay in approval of the divestiture.

Touch America will touch briefly on a number of assertions made in AT&T's comments. These assertions by AT&T are without basis in fact. For example, AT&T falsely asserts that Qwest is only "parking" the divested customer accounts with Touch America until such time as Qwest/US WEST obtains interLATA authority. Qwest has no influence on Touch America. During negotiations with Qwest for the acquisition of its properties, Touch America perceived no such intent and, based on its observation during these negotiations, would not ascribe to Qwest the regulatory myopia which would have to accompany such an ill-conceived and doomed plan. The simple truth which confounds the poorly disguised anti-competitive attempts of AT&T here is that Touch America is purchasing this portion of Qwest's customer base and network assets because of their strategic value to Touch America, its future, and those of its customers and stockholders. Touch America not only intends to keep those customers permanently, but will compete with the resources it has to do so.

Another assertion of AT&T without factual basis is its claim that Touch America provides only interLATA "transmission." AT&T wants to create an implication that Qwest somehow will continue to be the service provider for the in-region customer accounts. The mere provision of certain support services on a transitional basis does not continue Qwest as the service provider. Touch America today outsources many of these same services. And the simple reason that Touch America will outsource these services to Qwest for a transitory period is that Touch America needs those services from Qwest in the short run to ensure that its newly acquired customers continue to perceive no diminution in their quality of service or their customer care once Touch America has taken over. As Touch America gains the means to absorb the significant addition to its customer base and the obligations that go with it, Touch America would itself be myopic to leave the control of such critical assets in the hands of its competitor for any period longer than absolutely necessary to ensure that the change in ownership itself does not cause customer attrition.

Finally, several of AT&T's comments on the nature of Touch America's relationship with Qwest and the content of its agreements with Qwest simply mischaracterize the actual facts. Once these comments by AT&T are exposed as factual misstatements and erroneous conclusions, it becomes clear that nothing of substance supports AT&T's attack on the adequacy of the Touch America/Qwest divestiture plan. The Commission then, should promptly approve the plan to better foster the public interests inherent in the consummation of these transactions. The public interest is not served by erroneously dignifying with any modicum of substantive consideration AT&T's

self-serving attempts to delay the pro-competitive benefits of Touch America's acquisition of Qwest's in-region business.

I. TOUCH AMERICA'S PERMANENT ACQUISITION OF THE QWEST IN-REGION INTERLATA AND INTRALATA BUSINESS IS OF GREAT STRATEGIC IMPORTANCE TO THE COMPANY.

The acquisition of the Qwest in-region interLATA and intraLATA business is of critical importance to the rapid accomplishment of Touch America's plans to develop its business within its traditional western state service area and to give it the base from which to develop its business on a nationwide basis. These plans already existed prior to Qwest's business becoming available for acquisition. The acquisition of the Qwest customer accounts and network assets simply accelerates the growth process Touch America had already instituted. AT&T's assertion that Qwest is positioning itself to reclaim the divested business from Touch America once Qwest/U S WEST gains interLATA authority, therefore, has no merit . Touch America is acquiring this business as any company would acquire another's business -- with the intent and commitment to grow that business and to compete vigorously with Qwest and all others in the process.

Touch America is an established provider of long distance, data, wireless and Internet services both within and outside the U S WEST region.3/ Touch America offers a full range of services to businesses and residences, including switched and dedicated long distance 1+, 8XX toll free access, calling card services, private line services, carrier termination services, frame relay, and Internet access. Touch America also holds LMDS licenses in 24 markets along its fiber optic routes, which it intends to use to provide a high-speed, broadband wireless network directly linking large data customers in 30 cities to Touch America's fiber network.

3/ *See* Attachments to letter from Charles H. Helein, counsel for Touch America, to Magalie R. Salas, filed March 27, 2000 ("March 27 Ex Parte Filing") for a fuller description of Touch America's current and planned services.

Touch America is wholly owned by the Montana Power Company ("Montana Power"), a Montana-based electric utility. On March 28, Montana Power announced its intention to divest its multiple energy businesses, with Touch America (Montana Power's telecommunications entity), the surviving business. As stated in the press release, by divesting the energy businesses, we "will sharpen our focus on our fast-growing telecommunications activities."4/ The divestiture of the energy businesses will enable the management team to devote its "complete attention . . . to continue to aggressively grow Touch America's national fiber-optic and wireless networks, including increasing traffic and revenues and building brand awareness." The press release also states that "[t]he capital received from the divestiture will be re-deployed to take advantage of Touch America's multiple telecommunications opportunities," including expansion of its fiber-optic network to reach 18,000 miles by year end 2000 and 26,000 miles by year end 2001.

As can be seen from a map of Touch America's existing and planned network, the acquisition of network assets and customer accounts from Qwest fits well into Touch America's current service and network footprint, as well as Touch America's plans for expansion as a nationwide carrier with a nationwide network. 5/ Touch America, today, has a state-of-the-art, high speed 11,000-mile fiber optic network, which traverses a number of states in the U S WEST region, as well as extending to California, Texas, Wisconsin, and Illinois. By the end of 2001, Touch America's network is planned to stretch across the country to New York and Boston, south along the East Coast to Florida, and across the southern U.S. to Texas. Touch America anticipates that its network will include a total of 26,000 fiber optic route miles by the end of 2001. The network facilities acquired from Qwest

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4/ *See* Montana Power/Touch America Press Release, "Montana Power to Divest Energy Businesses, Company to Become Touch America" (March 28, 2000).

5/ A map of Touch America's current and planned nationwide fiber optic network is included in the attachments to the March 27 Ex Parte Filing.

will give Touch America fiber optic routes across the southern portion of the U S WEST region, with the purchase of dark fiber IRUs between Brawley, California and El Paso, Texas, and between Denver, Colorado and El Paso.

Touch America is committed to being a nationwide facilities based carrier that will compete head-to-head with Qwest for national accounts. The acquisition of Qwest's in-region network assets fill in an important part of Touch America's planned network expansion, and gives Touch America an important springboard to compete both in the U S WEST region and nationwide. AT&T's suggestion that Touch America is not independent from Qwest, and that Qwest is positioning itself to reacquire the divested customer base, simply does not square with the facts.6/ But even more so, AT&T's suggestion that some carrier other than Touch America would be better able to provide service and compete effectively is unfounded. Given Touch America's strong track record in providing service today and its commitment to grow its telecommunications business both in-region and nationwide7/, any interexchange carrier, even the largest companies, would be hard-pressed to absorb Qwest's entire in-region customer base without use of transitional support services. If there be any doubt on this point, the Commission need only take official notice of AT&T's asserted difficulty in handling the orders for service for SDN resale; or in its inability to handle the orders for its first roll out of Internet service orders.

In short, AT&T's suggestions about Touch America's lack of independence from Qwest, and its role as merely "parking" Qwest's in-region business, is insulting and is untrue.

II. TOUCH AMERICA, NOT QWEST, WILL BE THE PROVIDER OF IN-REGION INTERLATA SERVICE IN ALL RESPECTS.

6/ AT&T Comments at 1-2.

7/ AT&T Comments at 13-14.

AT&T also suggests that the provision by Qwest of certain support services on a transitional basis means that Qwest, not Touch America, is the provider of in-region interLATA services to the transferred customers. AT&T also alleges that Qwest "effectively controls" Touch America's offerings.8/ These suggestions are baseless. Touch America holds itself out as the service provider. The customer sees only Touch America in all interactions. Touch America will ensure that customers see Touch America as their service provider, as the company they are to rely on. Touch America is contractually responsible for providing service. Touch America is in control of its network and is responsible for its design and operation. Touch America sets the prices, defines the products, markets and sells its services, determines whether to use sales agents or other distribution channels, and fulfills all the other core functions of a telecommunications service provider.9/

The real story is that Touch America is buying all of the in-region customer accounts. It is assuming all the contractual and tariff obligations for serving those customers. Touch America is buying network assets with which it will expand its existing network to enable it to absorb the large increase in traffic that its new customers will create. Touch America is doing these things for compelling business reasons of its own.

Despite AT&T's attempts to prove otherwise, nothing about the provision of a limited range of transitional support services serves to convert Qwest into a "provider" of in-region interLATA services. Touch America will be providing support services to the transferred customers itself,

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8/ AT&T Comments at 22.

9/ Touch America has committed to keep the rates of the at-will customers who purchase services under tariff at the existing rate levels for at least 90 days post-divestiture. Touch America, as the assignee of other customer contracts, must also maintain prices per the terms of those assigned contracts. *See* Divestiture Report at 14-15. There is no restriction on Touch America's rates for in-region prepaid, calling card, and operator services, other than the broad commitment that they be commercially reasonable. Within these parameters, Touch America is free to set prices at whatever level it chooses, and Qwest will not be permitted to have any veto power over Touch America's pricing decisions.

through its own third-party outside suppliers, and by contracting directly with a number of Qwest's support service vendors.10/ Touch America will also hire additional support personnel to accommodate the increase, and is offering employment to the entire in-region Qwest sales and marketing force. To the extent possible, Touch America, therefore, will provide support services itself or acquire them from third parties unaffiliated with Qwest, through separate contractual relationships with those parties. And Qwest and Touch America have been working on transferring, directly to Touch America, Qwest's arrangements for the following in-region support services: billing with U S WEST; billing with a service bureau; customer care centers; production of marketing materials; and third-party verification.11/ Touch America shares Qwest's expectation that this process will be complete before closing.12/

For those remaining support services that Touch America will obtain from Qwest, Touch America plans only to use Qwest for a transitional period . But Touch America has no magic wand that when waved upon merger closing effectively coordinates the immense organization and reorganization required to absorb the magnitude of new assets that Touch America is acquiring. When appropriate and practicable, Touch America will either bring the support service functions in-house or use alternative sources of supply for those services that it decides to outsource. If other suppliers are cheaper or better in quality than Qwest, then Touch America will switch to those suppliers.

While Touch America realizes that Qwest is its competitor and for that reason alone will be motivated to end its use of Qwest support services as soon as possible, Touch America also realizes it will need the transitional support services being offered by Qwest in order to ensure that its

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10/ *See* Divestiture Report at 31-33.
11/ Divestiture Report at 32-33.
12/ Divestiture Report at 32-33.

customers are not disrupted, confused, or otherwise harmed by the transfer. Touch America will be the carrier for these customers post-divestiture and it wants to ensure that the transferred customer base has confidence in Touch America as its new service provider. The use of Qwest's network support services is necessary on a transitional basis to ensure that customers will not experience a disruption in service, will continue to receive the same high quality service, and to permit Touch America quickly to resolve any network-related problems. 13/

It would have been commercially imprudent, and contrary to the public interest for Touch America to take on the divested business without the availability of support services from the most logical and efficient provider of those services in this uniquely time sensitive situation. The most logical and efficient provider under these circumstances is obviously the soon to be former owner of the business being acquired, Qwest. By significantly increasing its customer base within a very tight time frame, Touch America's current in-house staffing and outsourcing arrangements, which are geared for the current volume of its business, could not readily absorb such a rapid ramp-up in demand. Touch America's current operations are scaled to serve a carrier that is beginning its expansion from regional to national carrier. Currently Touch America serves several thousand business and residential customers. As a result of the divestiture, Touch America will add, tens of thousands more business and residential customers. Simply put, in the exercise of its prudent business judgment, and given that Touch America will need additional infrastructure to perform the billing and collection, customer care, and network support functions for the significant infusion of

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13/ As discussed below in Section III, these network provisioning and support services are being provided by professional service employees that are dedicated solely to Touch America and whose salaries and benefits are charged directly to Touch America. Divestiture Report at 35-36. From the customer's point of view, the customer will never know that the employee with whom the customer has contact is not a Touch America employee. *Id.*

so large an increase in its customer base, Touch America chose the best and most efficient support services available until it can transition it to its own upgraded infrastructure.

As is clear from the support service agreements, Touch America ensured that it would not be bound to use Qwest support services any longer than it needs to. The transitional service agreements are in place for limited periods of time: 90 days (customer welcome fulfillment materials); six months (order entry, knowledge transfer, and professional services); and one year (renewable for up to two additional six-month periods) (billing and collection, software licensing and data processing, and switch maintenance).14/ Touch America has the right to terminate these services at any time, on 30 days' notice. The agreements contain maximum quantities of services that Touch America can purchase, but no minimums.

As soon as practicable, Touch America intends to acquire the assets and resources to perform these functions on its own, either in-house or by outsourcing to other entities. Touch America will allow the totality of facilities, pricing, reliability and customer need to dictate the ultimate provider of support services. Touch America intends to complete the migration of as many of these functions as possible within the one-year term of the "Transition Services Agreement," or earlier where possible.15/ Touch America has begun to hire new staff, and to expand its current use of existing third-party vendors. Touch America has already received one offer from a new "customer fulfillment" company seeking to match or beat Qwest's prices for providing the following services -- customer care, provisioning, billing, and verification.

14/ *See* Divestiture Report at 33-42.

15/ The Transition Services Agreement is the agreement by which these functions are provided by Qwest to Touch America. *See* Confidential Attachment to Divestiture Report, Tab III.A.

In the immediate post-divestiture time frame, however, it is essential to Touch America that it have a reliable and available source of supply for support services. Touch America will interface with the dedicated Qwest staff or its agents (subcontractors) performing billing, collection and customer care functions as it would with any third party vendor, that is, at arm's-length, making sure that those functions are performed according to Touch America's own specified needs and requirements.

AT&T also suggests that Touch America is using support services from Qwest in connection with prepaid cards, calling cards, and operator services in a way that somehow has Section 271 implications. As Touch America believes is correctly briefed in the Divestiture Report, the arrangements between the parties for all of these services are completely consistent with the requirements of Section 271.

With respect to prepaid cards, the agreement lasts for only two years. The offering of prepaid cards is the only product that Qwest provides that Touch America does not already provide. Touch America will benefit from Qwest's assistance in learning how it provides this service, and will use that information, complimented by Qwest's support services, to aid in increasing its own participation in that market. As a practical matter, Touch America must use the same third-party platform as Qwest to provide joint prepaid cards, but it remains free to provide its own prepaid card services independent from Qwest at any time. Touch America, not Qwest, will set the rates for prepaid services. Similarly, with respect to calling cards, to the extent that Touch America is providing in-region calling card services to Qwest's out-of-region calling card customers, as a technical matter, Touch America must employ the same calling card platform used by Qwest to do so. And, thus far, Touch America's analysis of its operating options strongly suggest the near-term necessity of using at least certain Qwest-provided billing and collection and related support services in this area as well. Every call will be separately branded by the two companies, however, and Touch America will set the prices for its operator services. Finally, with respect to operator services, although Touch America currently provides some operator services, it does not provide the type of operator services provided by Qwest. In order to take on the in-region operator services business from Qwest, Touch America needs to use Qwest support services over the near term.

In sum, Touch America is obtaining support services from unaffiliated parties as much as possible, given its significant immediate needs. Over time, it will migrate the transitional support services obtained from Qwest to self-supply or other suppliers. It is entirely within Touch America's control whether and for how long it takes such services from Qwest. AT&T's suggestion that the provision of such support services makes Qwest, and not Touch America, the service provider to in-region customers is simply unsupported by the facts.

III. AT&T MAKES A NUMBER OF FACTUALLY INCORRECT ASSERTIONS.

AT&T makes a number of other factually incorrect assertions throughout its comments. Touch America addresses some (though not all) of these assertions herein, leaving it to Qwest to correct the others.

First, as was correctly stated in the Divestiture Report, Touch America has no agreement or understanding with Qwest to engage in coordinated marketing.16/ AT&T points to a reference in the Bilateral Wholesale Agreement to a "Buyer Coordinated Marketing Agreement." No such agreement exists or is planned, and Touch America has executed an amendment to the Bilateral Wholesale Agreement deleting the reference to such an agreement. In fact, Touch America has the immediate ability to compete with Qwest for the business of any new out-of-region customers immediately.

16/ Divestiture Report at 45-46.

Touch America knows of no transactions involving the sale of customers and other business assets that do not contain a non-compete provision, whether in the telecommunications industry or any other. What is important to the parties is that the non-compete be arrived at by arm's length negotiations, and that the result of those negotiations provides for reasonable restrictions only. So long as those restrictions are based on prudent business considerations and are reasonable in scope and term, they are not invalid.

Moreover, AT&T mischaracterizes the scope of the non-compete agreement between the parties, implying that the agreement covers more than it does, and suggesting that the agreement weakens Touch America's ability to compete out-of-region.17/ The scope of the non-compete agreement is narrowly tailored to enable Touch America to compete freely against Qwest for new out-of-region customers.18/ Specifically, Touch America is free to compete immediately for the out-of-region business of any wholesale customer and for any retail customer other than the "transferred customers."19/ Touch America also may compete after one year to provide additional out-of-region services to the transferred customers. The three-year prohibition referred to by AT&T only applies to the out-of-region business of transferred customers existing at the time of divestiture. Most importantly, Touch America intends to see to it that the development of its business both in-region and out-of-region is not significantly hampered by the non-compete provisions.

Third, AT&T suggests that the in-region sales employees to be acquired by Touch America will somehow engage in coordinated marketing with Qwest's employees.20/ The employees that Touch America will acquire from Qwest – potentially the entire Qwest in-region sales force – are

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17/ AT&T Comments at 14.
18/ *See* Stock Purchase Agreement, Section 6.14, Tab I-A.
19/ "Transferred customers" are those Qwest customers whose in-region business was transferred to Touch America at divestiture.
20/ AT&T Comments at 13, 20.

essential to enable Touch America to develop the business of the divested customers and to quickly capitalize on Touch America's expanded network and service offerings. These employees will be Touch America's own, responsible only for selling Touch America products. Contrary to AT&T's unfounded suggestions, these employees will not be working with Qwest employees in a coordinated marketing arrangement, either informally or formally. As stated above, there is no agreement to engage in coordinated marketing between Qwest and Touch America, nor is any such agreement planned. It is the plan and deliberate goal of Touch America that the employees that Touch America will acquire will be located on Touch America premises, owned or leased. And it is fanciful in the extreme for any of the Qwest in-region sales employees being acquired by Touch America, to believe they would sign onto some conspiratorial effort against the company who signs their paychecks. And, finally, the agreement provides, moreover, that Qwest may not attempt to re-hire any of these employees for at least one year.

Fourth, AT&T implies that Qwest and Touch America will continue to engage in prohibited joint activities in connection with services provided to large common customers (the "Major Account Support Team" or "MAST" accounts).21/ The MAST services provided by Qwest are structured as a professional services arrangement.22/ They are branded "Touch America," so that no customers will be confused about the identity of their service provider. The agreement for these services is for only six months in order to ensure over this short time frame that the provision of professional support services is available for Touch America for this type of large account. Contrary to AT&T's implication, the professional services provided by Qwest employees to Touch America are only for

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21/ AT&T Comments at 6-7.

22/ *See* Divestiture Report at 35-37 for a description of the MAST support services.

pre-existing common customers.23/ Any new Touch America large customer accounts, whether or not with common customers, must be serviced by Touch America without the involvement of resources outsourced from Qwest.

Finally, AT&T suggests that Touch America's role as a Global Service Provider ("GSP") is somehow irrelevant to a determination as to whether Qwest is providing the interLATA transmission associated with Qwest's in-region information services.24/ Touch America understands that its role as a GSP is no different from that of other interexchange carriers providing GSP service to other Bell operating companies. Touch America provides the portion of the service that the BOC (in this case Qwest/U S WEST) is prohibited from providing. Touch America, not Qwest, will set the prices for its GSP services, and its contracts with end users are fully enforceable by Touch America.25/ Touch America is providing an important service to the end users subscribing to Qwest's information services.

Touch America also, and importantly, views the GSP offering as a substantial source of revenue. And Touch America sees other benefits from its providing GSP services to Qwest, including the wider dissemination of the Touch America brand name. Touch America is already in the Internet access business, and Touch America intends that its role as a GSP will help create additional business opportunities for Touch America in this area. Touch America does not intend to allow its status as a GSP for Qwest to deter it from also competing directly with Qwest/U S WEST (and others) for Internet access services.

23/ *Id; see* AT&T Comments at 5, 6-7.
24/ AT&T Comments at 23-34.
25/ AT&T incorrectly asserts that Touch America can enforce the GSP contracts with end users only as a third party beneficiary. AT&T Comments at 26.

CONCLUSION

Against this backdrop, it is remarkable that AT&T could contend that Touch America is merely "parking" the in-region Qwest customers and network assets for Qwest while Qwest gains Section 271 approval.26/

Nothing in AT&T's sole opposition calls into question the correct conclusion set forth in the Divestiture Report -- that the plan for divestiture fully meets the requirements of Section 271. Touch America's and the public interest require prompt action by the Commission to approve the Report. With approval, a stronger competitor will emerge to offer competitive telecommunications services to all consumers in the Western region of the country and, indeed, throughout the country, and these consumers will be able to reap the increased public interest benefits of the new competition that will be created.

Respectfully submitted,

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26/ AT&T Comments at 1-2, 13.

CERTIFICATE OF SERVICE

I, Suzanne Helein, hereby certify that on this 12th day of May, 2000, copies of the foregoing "Reply Comments of Touch America," in CC Docket No. 99-272, were served by hand delivery (where indicated) or by first class mail to the following.

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